**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

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| **MARGARET MITCHELL,** | ) | |
| | ) | |
| **Plaintiff,** | ) | |
| | ) | |
| **vs.** | ) | **Case No. 2:01CV00081 DJS/MLM** |
| | ) | |
| **JO ANNE B. BARNHART,** | ) | |
| **Commissioner of Social Security,** | ) | |
| | ) | |
| **Defendant.** | ) | |

**REPORT AND RECOMMENDATION**
**OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the court pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of Jo Anne B. Barnhart, Commissioner of Social Security, denying the request of Plaintiff Margaret Mitchell ("Plaintiff") for waiver of overpayment of Supplemental Security Income benefits ("SSI"), under Title II of the Social Security Act, 42 U.S.C. § § 401 et. seq. Plaintiff filed a Brief in Support of Complaint. See Doc. 31. Defendant filed a Brief in Support of the Answer. See Doc. 34. Plaintiff filed a Brief in Reply. See Doc. 35. This matter was referred to the undesigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1). See Doc. 6.

## I.
## PROCEDURAL HISTORY

Plaintiff began receiving SSI in 1988. (Tr. 53). Plaintiff received notification in September 1998 that she had received an overpayment of SSI benefits. (Tr. 56). On about October 17, 1998, Plaintiff received notice that her SSI check would be reduced for overpayment. (Tr. 56). Plaintiff filed a late appeal of the overpayment determination. (Tr. 56). Plaintiff's request for reconsideration was denied. (Tr. 56-59).

On October 22, 1999, a hearing was held before Administrative Law Judge ("ALJ") Robert E. Ritter. (Tr. 28). Before the ALJ, Plaintiff did not contest that she received overpayment but

requested that the Social Security Administration waive recoupment of the overpayment. By decision, dated November 15, 1999, the ALJ denied Plaintiff's request for waiver. (Tr. 11-17). Plaintiff filed a request for review of the decision of the ALJ with the Appeals Council. (Tr. 105-107). The Appeals Council denied Plaintiff's request for review. (Tr. 4-5). In denying Plaintiff's request for review, the decision of the ALJ became the final decision of the Commissioner.

## II.
## TESTIMONY and the RECORD BEFORE THE ALJ

At the hearing, the ALJ stated that the Commissioner alleged that, during the period of September 1997 through July 1998, Plaintiff was the owner of a home the value of which exceeded the $2,000 limit making her ineligible to receive SSI benefits. The ALJ further stated that the Commissioner alleged that Plaintiff was at fault in causing the overpayment. Plaintiff's attorney advised the ALJ that Plaintiff was not contesting the determination that she received overpayment of benefits. The attorney further told the ALJ that Plaintiff was alleging that she did not have reason to believe that her home was worth $2,000, and that, therefore, she did not believe she was required to report the value of the home. (Tr. 32). As such, Plaintiff's attorney stated that Plaintiff was entitled to waiver of the overpayment.

Plaintiff was 75 years old at the time of the hearing. (Tr. 45). Plaintiff testified that she lived in the home at issue from 1952 to 1997, at which time she moved out. (Tr. 32-34). She said that she had to move out of the home because it needed "so much work done on it." (Tr. 34). Plaintiff further testified that she informed the Social Security office that she moved out of the home; that she did not sell the home when she moved out; that she moved to another location; and that she owned the home until July 6, 1998. (Tr. 33). Plaintiff said that she owed back taxes on the home, which taxes she was unable to pay; that her son paid the back taxes; and that she signed the home over to him for the taxes. (Tr. 35).

Plaintiff also testified that after she moved out of the home she completed forms sent to her by the Social Security office and that she answered questions on the forms honestly. She said that at the time she moved out of her home she did not think it was worth much because it needed "so much work." She further said that when she moved out the home could not be rented and that it was not livable. (Tr. 34). Plaintiff testified that she did not try to sell the home because it needed so much work and that she did not get an expert's opinion on the value of the home. (Tr. 38).

Plaintiff testified that she moved out of her house because it was getting difficult to live there; that she had a window air conditioning unit in the home; that she did not have a furnace; and that the house was heated with a gas space heater she had in the livingroom and a small gas space heater she had in the bathroom. (Tr. 37-38). Plaintiff further testified that the home had a livingroom, a bedroom, a kitchen, and a bathroom. (Tr. 37).

Plaintiff said that, at the time of the hearing, her son was trying to fix the home so that it would be livable and that she did not know if he was planning to live in it himself or to rent it. (Tr. 39).

Plaintiff testified that, at the time of the hearing, she was still receiving SSI and that she was living in an apartment. She said that she moved to this apartment when she moved out of her house on August 13, 1997. Plaintiff further said that she pays rent of $161 a month for the apartment, which amount includes utilities, other than her telephone. (Tr. 35-36, 41). Plaintiff testified that she spends about $40 a month for her telephone bill. (Tr. 42). She said that sometimes she runs short of food and that she does not buy clothing because she does not have the money to do so. (Tr. 42-43). Plaintiff also said that she pays $27.32 every three months for burial insurance policy. (Tr. 42).

Plaintiff said that her only income is her Social Security check of $234 a month and her SSI check of $285 a month; that she does not receive food stamps or other assistance; and that she does

not own any other property, stocks or bonds. (Tr. 39-40). Plaintiff testified that she has a checking account and that the balance is never $1,000, and that she does not have an automobile. (Tr. 41).

Plaintiff testified that she did not remember whether there was anything in the form provided by the Social Security office when she first applied for benefits which suggested to her that if she moved from the home she owned and retained ownership that it would have to be counted against her. She also testified that at the time she moved from her home she thought it was worth nothing because she had asked for help form the Farmer's Home Administration to repair it and that agency turned down her request because the house was in such bad shape. (Tr. 45). Plaintiff further testified that recently there was a house for sale in the neighborhood where her house was located; that she did not know how much the sellers were asking for the house; that it did not sell; and that she did not know the reason why it did not sell. (Tr. 46-47).

Plaintiff's son testified that he planned to rehabilitate the house, little by little, and to live there himself. (Tr. 48). Upon questioning by the ALJ, Plaintiff's son further said that he made a total payment of $105.39, which included interest, for the three years of back taxes. (Tr. 50).

The record in this matter does not include a Notice of Overpayment. A printed Social Security record included in the record shows that Plaintiff was overpaid $3,082 between September 1997 and July 1998 for owning "non-home property." (Tr. 53-56).

Notes of a Social Security representative state that the representative called a realtor to find out the value of the home which Plaintiff owned. Notes state that the realtor told the representative that a lot in the neighborhood would be valued at $3,000 to $5,000 and that, with a structure on the property, it could possibly be worth between $8,000 and $10,000. (Tr. 90).

Notes of a Social Security representative also state that the representative verified that ownership of Plaintiff's home was transferred during July 1998; that the appraised value of the home

for tax purposes was $1,480, which is 19% of the actual value; and that the current owner paid the back taxes of $277.31. (Tr. 91).

By letter dated June 28, 1993, the Farmer's Home Administration of the United States Department of Agriculture ("FHA") informed Plaintiff that it could not take favorable action on Plaintiff's request for services to repair her home because it could not "correct all of the major safety hazzards with [its] limit of $15,000" and because the cost of repairs would exceed the value of the property. (Tr. 99).

## III.
## STANDARD OF REVIEW and APPLICABLE LAW

The ALJ's decision is conclusive upon this court if it is supported by "substantial evidence." See Onstead v. Sullivan, and subsequent cases. It is not the job of the court to re-weigh the evidence or review the factual record de novo. See McClees v. Shalala, 2 F.3d 301, 302 (8th Cir. 1994); Murphy v. Sullivan, 953 F.2d 383, 384 (8th Cir. 1992). Instead, the court must simply determine whether the quantity and quality of evidence is enough so that a reasonable mind might find it adequate to support the ALJ's conclusion. See Davis v. Apfel, 239 F.3d 962, 966 (8th Cir. 2001), (citing McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir. 2000)). Weighing the evidence is a function of the ALJ, who is the fact-finder. See Benskin v. Bowen, 830 F.2d 878, 882 (8th Cir. 1987).

Even if a court finds that there is a preponderance of the evidence against the ALJ's decision, that decision must be affirmed if it is supported by substantial evidence. See Clark v. Heckler, 733 F.2d 65, 68 (8th Cir. 1984). In Bland v. Bowen, 861 F.2d 533 (8th Cir. 1988), the Eighth Circuit Court of Appeals held:

> [t]he concept of substantial evidence is something less than the weight of the evidence and it allows for the possibility of drawing two inconsistent conclusions, thus it embodies a zone of choice within which the Secretary may decide to grant or deny benefits without being subject to reversal on appeal.

Id. at 535. See also Culbertson v. Shalala, 30 F.3d 934 (8th Cir. 1994); Turley v. Sullivan, 939 F.2d 524, 528 (8th Cir. 1991).

Thus, an administrative decision which is supported by substantial evidence is not subject to reversal merely because substantial evidence may also support an opposite conclusion or because the reviewing court would have decided differently. See Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002) (internal citations omitted). See also Nevland v. Apfel, 204 F.3d 853, 857 (8th Cir. 2000) (quoting Terrell v. Apfel, 147 F.3d 659, 661 (8th Cir. 1998)); Hutsell v. Massanari, 259 F.3d 707, 711 (8th Cir. 1991) (internal citations omitted).

This court also reviews decisions of the Commissioner to determine if there is an error of law. See Newton v. Chatter, 92 F.3d 688, 692 (8th Cir. 1996). "To the extent decisions [of the Commissioner] do not comport with [the Eighth Circuit's] holdings, they are in error, and will be reversed." Rogers v. Chater, 118 F.3d 600, 602 (8th Cir. 1997).

20 C.F.R. § 416.1205 provides that an individual is eligible for S.S.I. benefits if her nonexcludable resources do not exceed $2,000, and other requirements are met. 20 C.F.R. § 416.1201 defines resources as to include "any real or personal property that an individual ... owns and could convert to cash to be used for his or her support and maintenance." 20 C.F.R. § 416.1210 provides that "[t]he home (including the land appertaining thereto) to the extent its value does not exceed the amount set forth in § 416.1212" is not included in the calculation of nonexcludable resources. Section 1212 defines home as a shelter, and the land on which it is located, in which the individual has an ownership interest, and which the individual uses as his or her principal place of residence.

Where an overpayment of benefits is made, 42 U.S.C. § 1383(b)(1)(A) provides that " proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual." However, the Commissioner is directed to:

> make such provision as the Commissioner finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual ... who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter ... .

42 U.S.C. § 1383(b)(1)(B).

20 C.F.R. § 416.537 defines overpayments as " payment of more than the amount due for any period." Additionally, 20 C.F.R. § 416.550 clarifies when it is appropriate to waive recovery of an overpayment. Section 416.550 states, in relevant part, that:

> Waiver of adjustment or recovery of an overpayment of SSI benefits may be granted when ... :
>
> (a) The overpaid individual was without fault in connection with an overpayment, and
>
> (b) Adjustment or recovery of such overpayment would either:
>
> (1) Defeat the purpose of title XVI, or
>
> (2) Be against equity and good conscience, or
>
> (3) Impede efficient or effective administration of title XVI due to the small amount involved.

In regard to the Commissioner's interpretation of the Social Security Act, the Eighth Circuit has held:

> We note at the outset that an agency's interpretation of the statute that it is charged with administering is entitled to considerable deference. Department of Social Services v. Bowen, 804 F.2d 1035, 1038 (8th Cir.1986) (citing Young v. Community Nutrition Institute, --- U.S. ----, 106 S.Ct. 2360, 2365, 90 L.Ed.2d 959 (1986)). In Young the Supreme Court stated: 'if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.... [A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.' Young, 106 S.Ct. at 2364 (quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-44, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984)). The Supreme Court has also stated, however, that " 'this deference is constrained by our obligation to honor the clear meaning of a

> statute, as revealed by its language, purpose, and history.' " Southeastern Community College v. Davis, 442 U.S. 397, 411, 99 S.Ct. 2361, 2369, 60 L.Ed.2d 980 (1979) (quoting International Brotherhood of Teamsters v. Daniel, 439 U.S. 551, 566 n. 20, 99 S.Ct. 790, 800 n. 20, 58 L.Ed.2d 808 (1979)).

Groseclose v. Bowen, 809 F.2d 502, 505 (8th Cir.1987) (Groseclose)

In Gladden v. Callahan, 139 F.3d 1219, 1222 (8th Cir. 1998) (Gladden), upon considering § 416.550, the Eighth Circuit emphasized that the recovery of overpayment should be waived, according to the Regulations, where the Social Security recipient "is without fault, and recovery would be against equity and good conscience." The court further explained the circumstances under which a recipient might be found at fault and stated that the recipient:

> might be determined to be at fault for accepting overpayment ... if the evidence shows he should have recognized that his changed circumstances warranted notice to Social Security, or at least an inquiry about any effect of that change on his eligibility. 20 C.F.R. § 404.507(b) ("[F]ault on the part of the overpaid individual ... depends upon whether the facts show that the incorrect payment to the individual ... resulted from [f]ailure to furnish information which he knew or should have known to be material....").

Id. at 1223.

The Eighth Circuit explained, in Coulston v. Apfel, 224 F.3d 897, 900-901 (8th Cir. 2000) (Coulston), that a Social Security claimant's meeting her burden to establish she is without fault does not end the inquiry. It must also be determined that repayment would defeat the purpose of providing Social Security to the claimant or would be against equity and good conscience. Upon considering the meaning of "equity and good conscience," the court in Groseclose, 809 F.2d at 505-506, held that:

> The Social Security Act is silent as to the meaning of the phrase against equity and good conscience. Unless otherwise defined, statutory words "will be interpreted as taking their ordinary, contemporary, common meaning." Perrin v. United States, 444 U.S. 37, 42, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1979). The term equity "denotes the spirit and habit of fairness and justness." Gilles v. Department of Human Resources Development, 11 Cal.3d 313, 113 Cal.Rptr. 374, 521 P.2d 110, 116 n. 10 (Cal.1974) (quoting Black's Law Dictionary). The term conscience means "the sense of right or wrong together with a feeling of obligation to do or be that which is recognized as good." Webster's Third New International Dictionary 482 (1981). The court in Gilles

> recognized that "against equity and good conscience" is "language of unusual generality." Gilles, 521 P.2d at 116, 113 Cal.Rptr. at 380. The court also recognized that such broad language "necessarily anticipate[s] that the trier of fact, instead of attempting to channelize his decision with rigid and specific rules, will draw upon precepts of justice and morality as the basis for his ruling." Id. ...
>
> Although the legislative history does not reveal the meaning of the phrase, it does indicate that Congress intended to make recovery more equitable by authorizing the Secretary to waive recovery in certain circumstances. H.R.Rep. No. 728, 76th Cong., 1st Sess. 19 (1939) ("Provision is made for making more equitable the recovery by the Federal Government of incorrect payments to individuals."); Hearings on Social Security before the House Committee of Ways and Means, 76th Cong., 1st Sess. 2287-88 (1939) (expressing concern over allowing recovery from persons who are "perfectly innocent of any wrong doing"); S.Rep. No. 744, 90th Cong., 1st Sess. 257 (1967), U.S.Code Cong. & Admin.News 1967, pp. 2834, 3096 ("The new subsection (b) of section 204 of the act broadens the Secretary's authority to waive adjustment or recovery of overpayments.").
>
> Notwithstanding the deference given to administrative interpretations, we believe that the Secretary's definition of "against equity and good conscience" is unreasonably narrow. It cannot be said that the relinquishment of a valuable right and the changing of one's position for the worse represent the only circumstances in which recoupment would be inequitable. We find it difficult to imagine a more unfair or unjust situation than requiring a person who is without fault to repay overpaid benefits when that person had no knowledge of the overpayments. See United States v. Blackwell, 238 F.Supp. 342, 344-45 (D.S.C.1965) (although having found a change in position for the worse, the court emphasized the lack of knowledge in holding that recovery would be against equity and good conscience). Moreover, recoupment in this case would be inconsistent with the policy expressed in the legislative history--that recoupment should be equitable.

The court considered in Groseclose that the record demonstrated that: the claimant had no knowledge of overpayments; that he was not at fault; that the overpayments were not the result of an incorrect statement made by him, nor were they the result of a failure on his part to provide material information. The Eighth Circuit concluded, therefore, that recoupment from the claimant "in these circumstances would be against equity and good conscience as that phrase is commonly understood." Id. at 506.

In Coulton, 224 F.3d at 901, the court considered whether recoupment of overpayment from a Social Security recipient would "defeat the purpose of providing social security" to the recipient.

Upon reaching the conclusion that taking a small amount of benefits away from him would do so, the Eighth Circuit considered that the recipient was "far from well-off"; that his annual income skirted the poverty line, the threshold of which was $8,667 in 1999; that he had no savings account; that he lived from check to check; and that he testified that he had a hard time making ends meet.

## IV.
## DECISION OF THE ALJ

The ALJ first noted that the issue of waiver was the only matter before him as Plaintiff did not present good cause for late filing on the issue of overpayment. The ALJ acknowledged that Plaintiff informed the Social Security Administration that she moved out of her house in August 1997. He further noted that she did not address ownership of the house in this notification and that she maintained ownership of the house until July 1988. The ALJ concluded that when Plaintiff moved out of her house it and the property upon which it was located became nonexcludable resources. (Tr. 14).

The ALJ considered that upon reaching a determination that the value of Plaintiff's home was in excess of $2,000, the Social Security Administration relied upon the opinion of the realtor, that an undeveloped lot in the location at issue would sell for $3,000 to $5,000 and that with a structure it would sell for $8,000 to $10,000. The ALJ further considered that the Administration also relied upon the fact that the property was appraised at $1,480, and that based on the 19% multiplier, the Plaintiff's house was worth $7,000. The ALJ concluded that because Plaintiff did not advise the Social Security Administration of the status of her house as a nonexcludable resource she denied the Administration the opportunity to investigate the value of the house. He further concluded that the evidence upon which the Administration relied established that the home's value exceeded $2,000. (Tr. 15).

The ALJ also stated that when applying for Social Security benefits, claimants are advised of the reporting requirements and that periodic notification of reporting requirements are sent to

beneficiaries. The ALJ concluded that based on the circumstances of the case, Plaintiff knew or should have known that she was required to advise the Social Security Administration of her retained ownership of the house and property. He further concluded that because Plaintiff failed to furnish information which she knew or should have known was material, she was not without fault. As such, the ALJ found that Plaintiff was not eligible to have recoupment of overpayment of benefits waived. The ALJ, therefore, did not reach a determination of whether overpayment would defeat the purpose of the Act.

## V.
## DISCUSSION

The issue before the Court is whether substantial evidence supports the Commissioner's final determination. See Onstead, 962 F.2d at 804. Substantial evidence is that which a reasonable mind might accept as adequate to support the Commissioner's conclusion. See Jones v. Chater, 86 F.3d 823, 826 (8th Cir. 1996) (Jones). The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commissioner's findings from being supported by substantial evidence. See Browning v. Sullivan, 958 F.2d 817, 821 (8th Cir. 1992). Thus, even if there is substantial evidence which would support a decision opposite to that of the Commissioner, the court must affirm his decision as long as there is substantial evidence in favor of the Commissioner's position. See Jones, 86 F.3d at 826.

In Wilcutts v. Apfel, 143 F.3d 1134, 1136-37 (8th Cir. 1998) (Wilcutts), the Eighth Circuit clarified that upon determining whether substantial evidence on the record as a whole supports the ALJ's decision the reviewing court must take the entire record into consideration and consider how any evidence which contradicts the ALJ's decision "balances out." The court must not merely search

the record for evidence which supports the ALJ's decision but it must evaluate whatever evidence contradicts it. See id.

Plaintiff does not take issue with the determination of the Social Security Administration that overpayment was made of her SSI benefits. Plaintiff argues, however, that repayment of the overpayment should be waived. In support of this argument Plaintiff contends that the ALJ's decision is not supported by substantial evidence as she was without fault in regard to the overpayment.

**A. Fault:**

As discussed above, the ALJ concluded that Plaintiff was not without fault and that she was, therefore, not eligible for waiver of recovery of the overpayment of her SSI benefits. The ALJ concluded that Plaintiff failed to furnish information which she knew or should have known was material, and that she was, therefore, at fault. Upon finding Plaintiff at fault, the ALJ made the assumption that Plaintiff knew or should have known that she was required to report that she had not sold the house or to report the value of the house despite the fact that Plaintiff testified that she did not know she was required to do so. The court finds that the ALJ's determination in this regard is not based on substantial evidence on the record and is not consistent with the Regulations and law for the following reasons:

First, the ALJ assumed that Plaintiff had received numerous reminders over the years of the $2,000 asset limit. Indeed, a notation of a Social Security representative in the Reconsideration Determination states that Plaintiff "would have received numerous check stuffers and RZ's over the years that reminded her of the $2,000 asset limit." (Tr. 61). However, there was no actual evidence that Plaintiff had received such notification and Plaintiff testified that she did not remember receiving notification. See Wilcutts, 143 F.3d at 1137.

Second, the ALJ did not consider Plaintiff's advanced years and the fact that she started receiving benefits 13 years prior to her moving out of her house. 20 C.F.R. § 404.507 specifically directs the Administration to consider an individual's age, if pertinent.

Third, upon finding Plaintiff at fault the ALJ did not give appropriate weight to Plaintiff's unrefuted testimony that her house was not habitable and that she had to move out of the home because it needed so many repairs. The veracity of Plaintiff's testimony regarding the habitability of her home is established by the letter from the FHA informing Plaintiff that the *major safety hazzards* present in her home could not be corrected within the agency's $15,000 limit. The letter from the FHA further states that these *safety hazzards* included the *floor of the entire home* as well as the *floor joists*, *the roof* and *the furnace*. Under such circumstances it is not reasonable to assume that Plaintiff should have known that her home was arguably valued at over $2,000. Even if Plaintiff should have been aware of the Social Security Regulation requiring notification by a recipient that she is no longer living in the home which she owns (which she did), Plaintiff had no reason to believe that her home had more than minimal value and, hence, that she should report her circumstances.

Fourth, the ALJ relied on the notes of a representative of the Social Security Administration indicating that the representative called a random real estate agent to inquire about the value of Plaintiff's home. The real estate agent did not inspect the property and the notes do not indicate that the real estate agent considered the hazzardous condition of Plaintiff's home or the cost of demolition.

Fifth, the ALJ failed to give any weight to the fact that Plaintiff actually sold her home for $277.31, the amount of back taxes. This is evidence that Plaintiff had reason to believe that the value of her home was less than $2,000.

Sixth, the ALJ relied on the assessed valuation of Plaintiff's home. He failed, however, to inquire when the home was appraised for tax purposes and any change in value since that time.

Seventh, upon finding Plaintiff at fault, the ALJ considered that, by failing to advise the Social Security Administration of the status of her house, Plaintiff denied the Administration the opportunity to investigate the value of the property. However, 20 C.F.R. § 404.507(b) directs the Administration to consider whether *the claimant* knew or should have known that information which was not disclosed material. This Regulation does not provide that "depriving" the Administration the opportunity to appraise a residence is relevant to the inquiry of fault.

Eighth, the overpayment was not the result of Plaintiff's failure to report where she was living or the result of her making false statements. Rather, she informed the Social Security Administration of her change of address.

The court finds that substantial evidence on record does not show that Plaintiff should have recognized that her changed circumstances warranted notice to Social Security that she continued to own the home from which she moved. See Gladden, 139 F.3d at 1220 (citing 20 C.F.R. § 404.507(b)). Indeed, the substantial evidence which contradicts the ALJ's finding of fault clearly outweighs the minimal evidence that Plaintiff was at fault. See Wilcutts, 143 F.3d at 1137. Based on the above discussed reasons, the court finds that the ALJ's decision is not based on substantial evidence on the record as a whole; that it is not consistent with the Regulations and applicable law; and that it should be reversed in regard to the ALJ's finding that Plaintiff was at fault.

**B. The Failure to Waive Plaintiff's Repayment of Benefits Defeats the Purpose of the Act and is Against Equity and Good Conscience**:

If a person is not at fault, recoupment may be waived where repayment would defeat the purpose of the Social Security Act or repayment would be against equity and good conscience. See 20 C.F.R. § 416.550(b). Recoupment defeats the purpose of the Act if it deprives "'a person of income required for ordinary and necessary living expenses.'" Groseclose, 809 F.3d at 504.

Plaintiff testified that her total income each month is $552; that her monthly rent is $161; that her monthly telephone bill is about $40; that she pays $32 every three months for a burial insurance policy; and that she no longer buys clothing because she does not have money for that purpose. Thus, after paying her monthly expenses, Plaintiff has approximately $300 remaining for food and other expenses which might arise. Indeed, Plaintiff testified that sometimes she runs short of money to buy food. The court finds, therefore, that any reduction in the monthly amount Plaintiff receives to facilitate recoupment of overpayment of SSI benefits would deprive Plaintiff of income she requires for ordinary and necessary living expenses. The court finds, therefore, that as the facts of this matter fail to establish Plaintiff is at fault, the purposes of the Social Security Act would be defeated if recoupment of overpayment to Plaintiff were not waived.

The court notes that equity and good conscience would not require Plaintiff to live under dangerous conditions or live in her home until she was able to sell it so that she could to continue to receive SSI benefits. The court finds, therefore, that as the facts of this matter fail to establish Plaintiff is at fault, equity and good conscience preclude recoupment of overpayment by the Social Security Administration. See Groseclose, 809 F.3d at 506.

**C. Reversal and Waiver of Recoupment:**

The court has found above that it cannot be concluded from the evidence of record that Plaintiff was at fault. The court has further found that the evidence of record unequivocally establishes that recoupment would defeat the purpose of awarding SSI benefits and would be inconsistent with the concepts of equity and good conscience. Sentence 4 of 42 U.S.C. § 405(g) states that a court has the power to reverse the decision of the Commissioner without remanding. See e.g., White v. Heckler, 774 F.2d 994, 996 (10th Cir. 1985).

Where the "evidence detracts so substantially from the ALJ's" decision and where only one conclusion can be drawn which is contrary to that reached by the ALJ, a reviewing court may reverse and order the Commissioner to award benefits. See Wiecamp v. Apfel, 116 F.Supp.2d 1056, 1076 (N.D. Iowa 2000) (citing Singh, 222 F.3d at 451; Wilcutts, 143 F.3d at 1136-37 (other citations omitted)). Also, the Eighth Circuit held in Andler v. Chater, 100 F.3d 1389, 1394 (8th Cir.1996) (Ander), that where it is beyond dispute that a claimant would have been awarded benefits absent a conclusion of the ALJ which is not supported by substantial evidence and where the record presented to the ALJ contains substantial evidence supporting a finding that benefits should be awarded, a reviewing court may reverse the decision of the Commissioner and grant benefits to the claimant. Thus, this court has the authority to order the Commissioner to waive recoupment of the overpayment of SSI benefits to Plaintiff. See id. (citing Parsons v. Heckler, 739 F.2d 1334, 1341 (8th Cir.1984)). Moreover, where, as in the matter under consideration, "further hearings would merely delay benefits, ... an order granting benefits is appropriate." Iida v. Heckler, 705 F.2d 363, 365 (9th Cir. 1983) (holding reinstatement of disability benefits without further agency proceedings is appropriate when a new administrative hearing would serve no useful purpose). The court finds, therefore, that the decision of the Commissioner should be reversed; that the Commissioner should be directed to reimburse Plaintiff for any benefits which have been withheld from Plaintiff's SSI as a result of the Commissioner's recoupment of overpayment; and that the Commissioner should further be directed to waive recoupment of overpayment.

## VI.
## CONCLUSION

The court finds that the decision of the ALJ is not supported by substantial evidence on the record and is not consistent with the Regulations and applicable law. The court further finds that the Commissioner should be instructed to reimburse Plaintiff for any benefits withheld from Plaintiff's

SSI as a result of overpayment. Additionally, the court finds that recoupment of overpayment of SSI benefits to Plaintiff should be waived.

Accordingly,

**IT IS HEREBY RECOMMENDED** that the relief which Plaintiff seeks in her Brief in Support of Complaint should be **GRANTED**. [Doc. 31]

**IT IS FURTHER RECOMMENDED** that, pursuant to 42 U.S.C. 405(g), sentence 4, a Judgment of Reversal should be entered in favor of Plaintiff directing the Commissioner to reimburse Plaintiff for benefits withheld and directing the Commissioner to waive recoupment of overpayments made to Plaintiff;

**IT IS FURTHER RECOMMENDED** that upon entry of the Judgment, the appeal period will begin which determines the thirty (30) day period in which a timely application for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, may be filed.

The parties are advised that they have eleven (11) days in which to file written objections to these recommendations pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 18th day of December, 2003